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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

C.M., on her own behalf and on behalf of her
minor child, B.M.; et al.

Plaintiffs,

v.

United States of America,

Defendant.

No. 2:19-cv-05217-SRB

**REPLY IN SUPPORT OF
PLAINTIFFS' SUPPLEMENT
TO MOTION FOR
SANCTIONS**

A.P.F. on his own behalf and on behalf of his
minor child, O.B.; et al.

Plaintiffs,

v.

United States of America,

Defendant.

No. 2:20-cv-00065-SRB

1 Defendant argues that the late production of Mr. Lloyd's notes did not harm Plaintiffs
2 because the government was not required to produce them until Plaintiffs served an RFP
3 seeking the notes in July 2022. Opp. at 3–4. Defendant is incorrect.

4 During a discovery meet and confer on October 23, 2020, Defendant confirmed that
5 “in addition to emails and non-email ESI, relevant hard copy documents are being collected
6 from the identified custodians and produced.” Ex. A, at 2. During that same meet and
7 confer, the parties agreed that “Plaintiffs will propose search terms, custodians, and [a] date
8 range for a supplemental HHS search and production.” *Id.* The parties subsequently agreed
9 to additional HHS custodians, including Mr. Lloyd. *See* Supplement at 1–2 n.2. The
10 government produced Mr. Lloyd's ESI documents as part of MIDP.

11 During fact discovery, Defendant took the position that “once the Government has
12 completed an initial production under MIDP, its obligation to produce documents is
13 complete.” Ex. A, at 2. “[T]o the extent that Plaintiffs s[ought] additional documents (even
14 if such documents are relevant to the parties' claims and defenses) or identif[ied] documents
15 missing from the MIDP production,” Defendant asserted that “Plaintiffs are required to serve
16 RFPs to request such documents.” *Id.* Plaintiffs “disagreed and explained that the
17 Government's obligations under MIDP were ongoing.” *Id.*

18 Plaintiffs issued the RFP at issue after Tricia Swartz, the former Associate Deputy
19 Director of the Office of Refugee Resettlement (“ORR”) testified on May 24, 2022 that she
20 took handwritten notes during meetings. *See* Ex. B, Swartz 5/24/2022 Dep. Tr. at 15:9–22.
21 Since Plaintiffs did not have those notes, Plaintiffs issued an RFP “seeking handwritten
22 notes from former and current HHS employees ‘whose ESI documents were produced in
23 this matter’ (which included Mr. Lloyd).” Opp. at 3–4. The fact that Plaintiffs believed it
24 would be more efficient to serve an RFP to obtain the notes rather than raise a MIDP dispute
25 with the Court at that time does not negate the fact that the notes should have been produced
26 two years earlier during the MIDP process. Nor can Defendant now assert that, by serving
27 RFPs, Plaintiffs agreed that Defendant was not obligated to produce relevant documents via
28 MIDP.

Notably, Defendant did not produce Mr. Lloyd's notes in response to MIDP or in response to the RFP. Instead, Defendant produced the notes in February 2023, well after the end of fact discovery. *See* Opp. at 2. While Defendant contends that the notes were recently found in a "folder marked for a non-relevant subject matter," *id.*, the late production of Mr. Lloyd's notes is not an isolated incident, but is rather the most recent of a series of late productions that have prejudiced Plaintiffs.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' request for relief as stated in Plaintiffs' Motion for Sanctions (*C.M.* Dkt. No. 333; *A.P.F.* Dkt. No. 328) and Supplement to Plaintiffs' Motion for Sanctions (*C.M.* Dkt. No. 367; *A.P.F.* Dkt. No. 359).

RESPECTFULLY SUBMITTED this 24th day of March, 2023.

By /s/ Travis C. Hunt

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